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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-38762-2024 in/andCRM-M-36663-2024
Date of Decision: September 27, 2024

SANDEEP SINGH ALIAS SONUPetitioner(s)

VERSUS

STATE OF HARYANARespondent(s)

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. D.P.S. Bajwa, Advocate
for the petitioner.

Mr. B.S. Virk, Senior DAG, Haryana.

SANDEEP MOUDGIL, J.(ORAL)

CRM-38762-2024

The instant application has been preferred under Section 528 of BNSS 2023 for placing on record the affidavit of the brother of the petitioner and also the orders vide which the petitioner has been extended the concession of bail in other FIRs in compliance of order dated 29.08.2024 and the same has been detailed in his affidavit at para 4 which reads as under:-

Sr.No.	FIR/dated/u/s	Police Station/District	On bail/custody	Custody period
1.	188 dated 12.09.2023 u/s 21-B, 25, 61, 85 of NDPS Act	City Budhlada, Mansa	On bail dated 18.03.2023	01 month 05 days
2.	103 dated 22.04.2022	City Budhlada, Mansa	On bail dated 29.04.2022	05 days



3.	41 dated 08.05.2013 u/s 457, 380 IPC	City Budhlada, Mansa	On bail dated 21.05.2013	11 days
4.	115 dated 27.05.2021 u/s 457, 380, 411, 34 IPC	City Rama Mandi Jalandhar	On bail 05.07.2024	24 days
5.	441 dated 08.05.2013 u/s 457, 380 IPC	City Narwana Jind	On bail 06.06.2024	06 months 22 days
6.	188 dated 12.09.2023 u/s 21(b), 25, 29 of NDPS Act	City Budhlada	On bail 21.12.2023	33 days
7.	287 dated 19.10.2023 u/s 379A, 34 IPC	Sadar Narwana Jind	On bail 06.07.2024	07 months 05 days
8.	279 dated 15.10.2023 u/s 379 A	Sadar Narwana, Jind	On bail 04.06.2024	09 months 01 day
9.	103 dated 2022 u/s 21, 61, 85 of NDPS Act	City Budhlada Mansa	Acquitted on 16.07.2024	Nil
10.	300 dated 22.10.2023 u/s 379-A, 34 of IPC	PS Uchana, Jind	Pending in the Hon'ble High Court	08 months 27 days

For the reasons mentioned in the application the same is allowed
subject to all just exceptions. Annexures P-10 to 13 are placed on record.

CRM stands disposed of.

1. **Relief Sought**

The jurisdiction of this Court under Section 483 BNS, 2023 has
been invoked seeking the concession of grant of regular bail for the petitioner



in instant FIR No.300 dated 22.10.2023, under Sections 379-A, 34 of IPC registered at Police Station Uchana, District Jind.

2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

‘Respected Sir it is submitted that I Sewa wife of Dalbir Jaat is permanent resident of Village Surbera and with my husband and brother-in-law (Dewar) residing in the farm house. The marriage ceremony of Roshan (FOJI) son of my brother-in-law (Jeath) namely Dhira son of Gaje Singh taking place at the Village house, where all the family members had gone there and I was at home to take care of my house SO at around 11:30 A.M. my BP increased. Due to which I went on foot from my house to the medical shop located at Surbara bus stand to check my BP, I was returning to my home in Dhani (Farm House) on foot, around 12:00 PM when I was turning from the road towards my field through a dirt road (kacha rasta), at that time two young boys wearing black cloths came from behind on a Platina Motorcycle and started asking me whether this was a village or a city. When I started saying this, one of the boys broke one and half tola locket gold and two lockets of half-half tola of gold which I was wearing due to the wedding ceremony. He broke them and took them away and immediately they rode a motorcycle which had no number plate and fled towards Narwana. The gold lockets that I lost should be recovered and action should be taken against them.’

3. **Contentions**

On behalf of the petitioner

The Ld. counsel for the petitioner contends that snatching of gold chain is attributed to the petitioner along with co-accused in question, namely Sanjay. He is seeking regular bail asserting that investigation is complete and recovery of alleged snatched gold chain stands effected from the co-accused Sanjay.



Notice of motion.

On behalf of the State

Mr. B.S. Virk, Senior DAG, Haryana, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for almost 07 months 27 days. He contends that the petitioner is a habitual offender as is evident from the said certificate showing him to be involved in multiple cases including some of them under NDPS Act i.e. FIR No.188 dated 12.09.2023 under Section 21-B, 25, 61, 85 of NDPS Act registered at Police Station City Budhlada, Mansa and FIR No.103 dated 22.04.2022 under Sections 21, 61, 85 of NDPS Act, registered at Police Station City Budhlada, Mansa and does not deserve the concession of grant of regular bail and therefore, this petition is liable to be dismissed. However, on perusal of the information brought on record before this Court by way of an affidavit in other part of this order, the petitioner already stands enlarged on bail in all the other FIRs as has been detailed therein.

4. **Analysis**

This Court is sanguine of the fact that investigation is complete, thereby challan stands presented on 20.02.2024, whereby charges were framed on 05.04.2024, though the trial is proceeding at a snail's pace and the conclusion of the same is likely to take a considerable amount of time and detaining the petitioner behind bars for an indefinite period would solve no purpose.

Reliance can be placed upon the judgment of the Apex Court rendered in "***Dataram versus State of Uttar Pradesh and another***", 2018(2)

B.C.R. (Criminal) 131, wherein it has been held that the grant of bail is a



general rule and putting persons in jail or in prison or in correction home is an exception. Relevant paras of the said judgment is reproduced as under:-

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or



not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re- Inhuman Conditions in 1382 Prisons, 2017(4) RCR (Criminal) 416: 2017(5) Recent Apex Judgments (R.A.J.) 408 : (2017) 10 SCC 658

6. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nimesh Tara chand Shah v. Union of India, 2017 (13) SCALE 609 going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 in which it is observed that it was held way back in Nagendra v. King-Emperor, AIR 1924 Calcutta 476 that bail is not to be withheld as a punishment. Reference was also made to Emperor v. Hutchinson, AIR 1931 Allahabad 356 wherein it was observed that grant of bail is the rule and refusal



is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.

7. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.”

Therefore, to elucidate further, this Court is conscious of the basic and fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure as enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in “**Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna**”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that the pre-conviction period of the under-trials should be as short as possible keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “**Baljinder Singh alias Rock vs. State of Punjab**” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner



appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of concession of bail.

5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under Section 483 BNS, 2023 on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

In the afore-said terms, the present petition is hereby allowed.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

27.09.2024
Sangeeta

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No